

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL STARKEY,

Defendant.

8:17CR242

ORDER

This matter is before the Court on a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 110) purportedly filed on behalf of defendant Samuel Starkey (“Starkey”) by Michael J. Dee (“Dee”). This is the second such motion Dee has filed in this case. On May 15, 2019, the Court denied a similar § 2255 motion Dee purportedly filed on behalf of Starkey’s codefendant Marvell Fields. In denying the motion, the Court explained Dee had failed to establish his standing to file a motion on Fields’s behalf. *See Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990) (explaining a party seeking to establish third-party standing “must provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action” and “must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate”). The same is true here.

As with Fields, Starkey did not verify or sign the motion. In explaining why, Dee states he has “been in contact with Mr. Starkey by email since February” about Dee’s proposed § 2255 motion and provided him a “prepared document,” but Starkey never filed it. According to Dee, Starkey explained on May 24, 2019, he was skeptical about filing the motion and feared getting more time. Three days later, Dee apparently decided on his own to file the motion on Starkey’s behalf to “bring to the court’s attention that the operation and effect, in the enforcement of the unreasonable marijuana and gun laws, is a

substantial denial of his explicit constitutional right of liberty, an Article III case or controversy.”

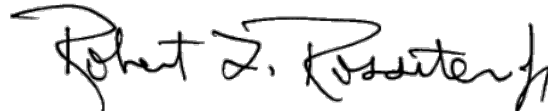
Given Dee’s explanation, he has not established his standing to file a § 2255 motion on Starkey’s behalf. As such,

IT IS ORDERED:

1. The pending Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 110) purportedly filed on behalf of defendant Samuel Starkey by Michael J. Dee is denied.
2. The motion will not count as a first 28 U.S.C. § 2255 motion filed by Starkey.
3. A separate judgment will issue.
4. The Clerk of the Court shall mail copies of this Order and the Judgment to Starkey at the address of record for his current place of incarceration and to Dee at the address listed on the motion.

Dated this 4th day of June 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
United States District Judge